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September 11, 2019

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BY ECF

Hon. Steven Locke
United States District Court
Eastern District of New York
100 Federal Plaza
Central Islip, NY 11722

Re: **Better Mornings, LLC et ano. v. Joseph Nilsen et ano., Case No: 2:19-cv-03854**

Dear Magistrate Judge Locke:

This firm represents Defendants Joseph Nilsen and Digital Checkmate, Inc. ("Defendants") in the above-captioned action. We write, on behalf of Defendants, to respectfully request an extension of time for the parties to hold their conference pursuant to Fed. R. Civ. P. 26(f) and for the Court to issue a Scheduling Order pursuant to Fed. R. Civ. P. 16(b) until after Defendants submit an answer in this matter, if any. Good cause under Fed. R. Civ. P. 16(b)(2) exists for the extension since yesterday Defendants submitted a pre-motion letter to Judge Seybert requesting permission to move to dismiss. We submit that it does not make practical sense to have a conference to discuss, *inter alia*, the subjects on which discovery may be needed or to set a schedule that requires discovery to proceed when it is not certain what claims or parties will remain in the case and what affirmative defenses may be pled. No scheduling conference has been scheduled. This is Defendants' first request for an extension of time of such deadlines. It otherwise appears the Scheduling Order under Fed. R. Civ. P. 16(b) would be due on October 9, 2019, requiring the parties to hold their conference by September 18, 2019. Plaintiffs do not consent to this request as they contend it is tantamount to a stay of discovery.

We thank the Court for its attention to this matter and respectfully request the Court memo endorse this letter and permit the Rule 26(f) conference to be held and the report

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required under the same rule to be submitted to the Court within 21 days of Defendants' answer, if any.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "S. L. Butt", with a long, sweeping horizontal stroke extending to the right.

Samuel L. Butt

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